

CAPITAL PLANNING ADVISORY BOARD

Minutes of the Second Meeting of the 1999 Calendar Year

May 6, 1999

The second meeting of the Capital Planning Advisory Board (CPAB) of the 1999 calendar year was held on Thursday, May 6, 1999 at 9:00 AM, in the Crown Room (6th Floor) of the Jefferson County Judicial Center. Representative Perry Clark, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Representative Perry Clark, Chairman; Bill Hintze, Vice-Chairman; Susan Clary; Glenn Mitchell (representing Secretary James Codell); Representative Brian Crall; Bonnie Howell; Lou Karibo; Cicely Jaracz Lambert; Jim Nealy; Norma Northern; Nick Schwendeman; Laurel True; and Senator Ed Worley.

Guests: Chief Justice Joseph E. Lambert, Kentucky Supreme Court; Leesa Hayden, Debra Wash, Laura Stammel, and Joe Gray, Administrative Office of the Courts; Terry Thompson, Cabinet for Families and Children; David Garr, Justice Cabinet; Allen Holt, Joe Lancaster, and Mark Coleman, Governor's Office for Policy and Management; Jeff McElwain, Department of Corrections; David Nicholson, Louisville-Jefferson County Crime Commission; Jim Deckard, Kentucky Supreme Court; Jennifer Marsh, Senate President's Office; and Melissa Biggs, Legislative Research Commission.

LRC Staff: Pat Ingram, Mary Lynn Collins, and Phillip Smith.

Chairman Clark welcomed new CPAB member, Cicely Jaracz Lambert, who is Director of the Administrative Office of the Courts. He also expressed the Board's appreciation to those who had helped arrange for this meeting at the new Jefferson County Judicial Center, particularly the staff of the Jefferson County Court Administrator's Office.

As the first item on the meeting agenda, Chairman Clark introduced Supreme Court Chief Justice Joseph E. Lambert to address the Board.

Chief Justice Lambert thanked Chairman Clark, then noted he has served as Chief Justice for only six months and that several members of the Board have had more experience with court facilities projects than he has. He said there have been a lot of court facilities construction projects since the early 1990s, which is probably a recognition of

the fact that the facilities were woefully outdated and in need of improvement. He said the Court of Justice is where most people have day-to-day contact with the government, and it is appropriate to build respect for government by means of the facilities where people come to congregate and to transact their business.

Chief Justice Lambert said a lot has been done in recent years to bring new, much-needed court facilities to Kentucky's more populous counties - like Jefferson, McCracken, Warren, Madison, Pike, Kenton, Fayette, and Hardin - but a lot of needs remain in the rural areas of the state. He said he has visited courthouses throughout the state, and cited the example of a two-story courthouse in which the only restrooms are in the basement, accessible only by stairways. He said there are many similar situations elsewhere. Noting that local governments have submitted 39 projects for consideration to be funded by the 2000 General Assembly, Chief Justice Lambert said he worked with Cicely Lambert, Nick Schwendeman, and others to prioritize those projects. He said there was absolutely no favoritism - regional or political - in conjunction with that prioritization; it was based strictly on need. He said the intent is to provide court facilities that serve the needs of people, not to provide frills for or to supplement local governments.

Chief Justice Lambert concluded his remarks and said he would be happy to discuss this further with the Board.

Mr. True asked whether, given the better highways and reduced travel times now, there might be a time when Kentucky would have area judicial centers where two or three smaller counties would come together. Chief Justice Lambert said that in terms of the wise use of resources it makes sense to consolidate court resources and avoid duplication of services and facilities, especially in smaller counties that may be losing population. However, in Kentucky there is a strong tradition of having 120 counties, and it would be difficult to tell someone they must give up their county or consolidate their court. Some changes in the statutes might be needed because they require a circuit court and a district court in every county. But Chief Justice Lambert said the idea may be relevant. Responding to Mr. True's question about whether the court had to be held in the county or whether it could be held for the county, Chief Justice Lambert said he could not give an exact answer but believes statute requires the court to sit in the county unless the case is transferred for change of venue purposes.

Ms. Clary explained that the statute which funds court projects was enacted after the passage of the Judicial Article that unified the courts. It was done so that counties would not feel like the court system was going to come in and build its own courthouses. The main intent was to ensure that courthouses were habitable because county officials often were not interested in doing so, e.g., taking care of leaking roofs, removing asbestos. The statute gave the local governments a financial interest; they are becoming

more willing to take advantage of it such that the courts are really in the building business now. She said the CPAB has helped to professionalize what AOC does in this regard.

Mr. Hintze noted that this is the first time the Board has heard from a Chief Justice about court facilities needs apart from the biennial review of the six-year capital plans. He then explained that courthouse construction and renovation is the fastest growing portion of the state's capital budget. In one legislative session (1996), by authorizing six new courthouses (Jefferson, Fayette, Madison, Hardin, Kenton, and Warren Counties) the state authorized four times more courthouse construction than had been authorized in the previous 20 years, and then added to that very significantly in the 1998 Session. This was done using a system initially established to address items needed for ordinary operations of the courts - renovations, clean-ups, and some small construction projects. Steps have been taken to provide some planning and architectural assistance for AOC.

Mr. Hintze said over the 20 years since passage of the Judicial Article, the state court system had matured in many ways, but its physical facilities had not done so until the major action taken in 1996. In contrast to the Judicial Branch, the construction program for the rest of the state is very mature, with the Department for Facilities Management in the Finance Cabinet and similar systems at the universities. Besides the large courthouse construction program, the 1998 Session authorized the largest statewide construction program in history. However, Mr. Hintze said, the 2000 General Assembly will not have as many financial resources available to it.

Chief Justice Lambert said he is concerned about obtaining funds in the Judicial Branch budget for the 16 courthouse projects authorized in the 1998 budget for which the use allowance was deferred until the 2000-02 budget.

In response to Senator Worley's question about the status of the projects authorized in 1998, Mr. Schwendeman said some have broken ground, some are still in the design process, and some are on hold due to changes in governmental administrations in the counties.

Noting his experience in working with a local court project, Senator Worley added that he hopes the ability to establish realistic cost estimates can be incorporated into the process before the next Session.

There being no further discussion, Chairman Clark thanked Chief Justice Lambert for his presentation.

Next on the agenda was action on the minutes of the February 19 meeting. Mr. Hintze's motion for approval was seconded by Ms. Clary and passed without opposition.

Chairman Clark explained that court projects are handled in a manner very different than capital projects in other areas of government, and it is his understanding that the process has generated a lot of discussion from the Board previously. He indicated that, particularly for the benefit of the newer CPAB members, Cicely Jaracz Lambert, Director of AOC, and Nick Schwendeman, AOC's General Manager for Facilities, would provide an overview of the planning, funding and implementation of court projects.

Ms. Lambert thanked Chairman Clark and said she has been AOC Director only since March 8, so she would provide an overview and Nick Schwendeman would address details of the process and recent projects and be able to respond to questions.

Ms. Lambert said the Facilities Unit of AOC, headed by Mr. Schwendeman, is responsible for coordinating construction, expansion, renovation, and interior and exterior maintenance of court facilities statewide. She noted that the 1996 General Assembly required that all new construction and major renovations to court facilities must comply with guidelines of the National Center for State Courts (NCSC), and that the AOC Facilities Unit publishes guidelines for Kentucky facilities which incorporate many of the NCSC standards. She also noted that an increased emphasis on security has resulted in the establishment of three circulation patterns for new and renovated facilities, which separate those in custody, the general public, and judicial staff. Ms. Lambert said the General Assembly's recognition of the need to improve court facilities resulted in significant funding authorizations for this purpose in 1994, 1996, and 1998. She then turned the presentation over to Mr. Schwendeman.

Mr. Schwendeman said AOC does not own facilities; it relies on local government to provide for court space needs. Providing court facilities is a partnership where local governments act as the developer of new/renovation projects, select the architect, and financial agent, bid construction, and arrange financing and in return, the state, through AOC, pays a use allowance and operating expense allowance in accordance with KRS 26A. The use allowance is based on the court's proportionate share of principal and interest, not to exceed 8 percent annually of capital costs, or if there is no debt, 4 percent annually of the capital costs. The operating expense allowance is based on the court's occupancy ratio and actual operating expense costs.

Mr. Schwendeman said the 1998 General Assembly provided funding for AOC for an architect and a court facility planner, as well as for specialized consulting services (e.g., structural and mechanical engineering). The personnel would be responsible for conducting a comprehensive assessment of current court facilities, establishing standards for projecting future growth, and assisting counties with limited resources to do feasibility studies and develop preliminary cost estimates for construction projects. Mr. Schwendeman said the architect position was filled in October 1998, and AOC is currently advertising for the Court Facility Planner. The architect has been reviewing

plans for projects authorized by the 1998 General Assembly, coordinating the review process with NCSC, and reviewing the projects that have been submitted to AOC as a part of the 1998-2004 capital planning process. Limited amounts of the consulting funds have been used to date, but the intent is to continue using them to work with counties on various repair items, and to audit selected construction projects to ensure the project was delivered as initially proposed.

Mr. Schwendeman then enumerated some issues that have arisen in recent years relative to the authorized projects. They include: 1) changes in county administrations in which a new administration disagrees with something about the authorized project; 2) perceptions by local governments that the funding is a grant instead of a pledge to help retire the court's portion of the county-incurred debt; 3) projects submitted as one concept, then changed by the county or AOC; 4) projects that were simply poorly conceived or the architect missed the space program by not following the guidelines or taking into account caseload, population shifts or other activities; 5) counties that do not want to surrender their use and operating payments on the old facility so they submit hybrid projects which accommodate the needs but keep AOC occupying some former space; 6) other state and county agencies designed to be in the facility but who later lack funding to pay their proportionate share; 7) changes from the originally proposed means of financing which may impact project cost; 8) counties wanting to build additional space for future growth; 9) misleading information provided by others wherein counties believe they can get a "free building" from AOC; and 10) items that were not a part of the original project scope, but which are later deemed necessary such as roof replacement or asbestos abatement.

Mr. Schwendeman said despite their best efforts, sometimes cost overruns are unavoidable and justifiable. The 1998 General Assembly authorized a Court Facility Use Allowance Contingency Fund to provide for cost overruns not to exceed 15% of the use allowance. Any such overruns must be approved by the Court Facilities Standards Committee and reported to the Capital Projects and Bond Oversight Committee.

Mr. Schwendeman said the Court Facilities Standards Committee approves projects only after they have passed NCSC and AOC Facilities Unit review, and have come in at or below the authorized use allowance. A 15% increase will not be approved until the project has been bid, value-engineered, and all other measures used to further reduce costs.

Mr. Schwendeman then reviewed the process used to develop the 1998-2004 Judicial Branch Capital Plan. In July 1998, the "Guidelines for Kentucky Court Facilities," which are published by the Facilities Unit and made available to the counties and architects, were revised. Letters were sent to counties in October 1998 and again in January 1999 advising that proposed projects were to be submitted to the AOC offices by

the end of January 1999. That deadline was later extended to the end of February due to many changes in local government administrations following the November 1998 elections.

In its review of the plans, Mr. Schwendeman explained that AOC's staff architect established parameters for cost per square foot (based on the size and location of the facility) and for financing. All of the projects submitted provide for a 20-year bond issue and for interest to be capitalized for 18 months on small projects and for 24 months on larger projects. AOC requires that the counties retain the services of a financial agent and that an amortization schedule be submitted as part of the information for the proposed project.

After meetings with AOC staff, local governments submitted amended plans which were then included in the Judicial Branch Capital Plan. Prioritization of the projects involved the Chief Justice, the AOC Director, and AOC Facilities Unit and Budget Unit staff. Mr. Schwendeman said it was an extremely difficult task given the quantity of projects and recognizing the space and security needs of the smaller counties.

Mr. Schwendeman said all new projects and major renovations include ADA compliant facilities. In the past, there have been authorizations for ADA improvements specifically, but since funding is based on the courts occupancy ratio, some counties have not had the means to fund their share of the project. Since the facilities are locally owned, AOC can offer to help with the cost but cannot force improvements to be made.

Mr. Schwendeman said the counties may have to front some of the costs of the project, but those ultimately become part of the total project cost and are reimbursed to the county. The total cost includes site acquisition and development, architectural and engineering fees, National Center study/review, construction costs, and financing costs.

Mr. Hintze said having the financing parameters is a positive development for the AOC guidelines so that everything is starting at the same point. He asked whether they were enforceable or whether AOC can allow for bonds with longer terms if a legitimate cost overrun needs to be addressed. Mr. Schwendeman said the term could be extended minimally to cover cost overruns.

In response to a question from Mr. True, Mr. Schwendeman further explained that the use allowance initially goes toward retiring debt. Once the project bonds are retired AOC continues to make the use allowance at 4 percent of the capitalized cost, but the county doesn't necessarily have to use those funds on the building since a separate operating use allowance is also paid by AOC.

Mr. True then asked whether AOC has any assurance that the buildings are going to be maintained with the money provided for that purpose. Mr. Schwendeman said he expects the Facilities Unit's role to change after the large number of major new projects is completed. It will be proactive relative to maintenance such as checking to be sure there are maintenance contracts on the chillers, etc. He noted that as a pilot project Kenton County issued an RFP (Request for Proposals) and soon will be awarding a contract to a company with experience in managing state and federal courthouses. This approach will provide greater accountability to ensure that the work being funded is actually being done on the courthouse rather than on another county building. He also said there are standards for janitorial service.

Ms. Schwendeman said that concluded his report and he would be pleased to answer any questions.

Rep. Crall noted that the General Assembly does not have the authority to commit funds beyond the current biennium, but it appears once a court project is approved it is basically an obligation for future General Assemblies. Mr. Hintze said the facility use allowance payments are tantamount to debt service, and as such, are the first thing preserved in a continuation budget or cutback environment. The use allowance payments do require biennial approval action by the General Assembly, like debt service, but they are aggregated for all of the facilities and handled as a lump sum appropriation in the AOC budget.

Rep. Crall said the current approach of funding projects for individual counties may not be the best way to continue. He asked whether it is within the purview of the Board to say it does not believe that each county should have a project, and to force by the funding approach, a rethinking of the way state resources are allocated. Ms. Clary said it appeared that was for this Board to define. Mr. Hintze noted that this is an advisory board which traditionally makes recommendations on policy issues as well as individual projects.

Mr. True asked what percentage of the court system is funded from trust and agency funds and what percentage is from state general funds. Mr. Hintze explained that since passage of the enabling legislation for the Judicial Article in the late 1970s, court costs and fines and fees go directly into the general fund and are not retained by the court system. Therefore, the courts are as much a general fund-supported operation as anything else in state government.

Ms. Clary noted that almost 90 percent of the courts budget is in fixed costs such as personnel and the use allowance payments. When overall budget increases are limited to 3 percent annually, the increasing number of new facilities projects makes it very difficult to provide any increases for personnel or programming.

In response to Mr. Hintze's request, Mr. Schwendeman next addressed the issue of security. He explained that the projects are designed with separate circulation patterns for the judicial staff, the general public, and the inmates and that the only time those three patterns cross is in the courtroom. Additionally, the facilities are limited access, meaning there is only one way in and one way out for the public and that includes passing through metal detection and sometimes having x-ray machines to expedite the flow. There are also systems to limit access to the judges' chambers and to the inner workings of the clerks' offices. Video arraignment systems are installed where desired, as well as video court recording systems.

Mr. Hintze noted that there must be staff to operate the metal detectors, and the cost of those deputy sheriffs is reflected in the Finance Cabinet's budget, not in the Judicial budget. It is a fast growing portion of the Finance budget.

Mr. Hintze also asked Mr. Schwendeman to discuss technology in the Judicial Branch's capital plan. Mr. Schwendeman noted that AOC has a separate general manager for information systems. He said the most up-to-date cabling is being provided in the new buildings. Every room is being looked upon as a possible workstation so the necessary cabling and resources are being provided. In Warren County, raised flooring is being used to allow things to be moved if necessary; and in Fayette County, accessible ceiling space is being used. In some instances as a part of the ongoing information systems operation, technology upgrades are being made even in the absence of a new or major renovation project.

Senator Worley asked whether AOC has a long-range plan that establishes a budget and timeframe for addressing court needs throughout Kentucky. Mr. Schwendeman said there is not a plan, as such. Since the mid-1990's, only 20 or 25 counties have not come to AOC with a project. However, some counties do not want to give up the operating costs use allowance they are receiving for an existing building, especially if the new project would be a 100 percent judicial center. He said it may be a long time before AOC hears from some of the counties.

Senator Worley expressed a concern that projects are being built to meet caseload projections just a few years out, and that the facilities being constructed now will soon have to be upgraded. Mr. Schwendeman said caseload and staffing trends are analyzed and where they think it will be needed in the future an effort is made to provide space which can later be modified. In response to a further question from Senator Worley, Mr. Schwendeman said he thinks the National Center for State Courts review adequately projects future needs.

Responding to Ms. Clary's question, Mr. Schwendeman said he does not think the National Center should get involved any earlier in the process than it does now (after authorization of the project). He said their earlier involvement could be a waste of time if a project does not proceed through the process.

Ms. Clary also asked whether the AOC Facilities Unit has adequate staffing. Mr. Schwendeman said filling three positions that are currently vacant, including the Court Facility Planner authorized in the 1998-2000 budget, should help immensely.

Senator Worley asked about the design-build approach for court projects and noted his concern that there are often significant cost overruns when this method is utilized. He also asked whether design-build was used for the Jefferson County Judicial Center. Mr. Schwendeman said AOC believes the conventional method of having a general contractor is preferable to the design-build approach for court projects. He said Jefferson County was a design-build project and did have a cost overrun, but the overrun was not necessarily related to the construction method. Mr. Hintze explained that Jefferson County did not have an overrun from a capital budgeting perspective whereby it had to go back to the General Assembly for an increased funding authorization. The increase was addressed within the appropriation due to favorable interest rates and the ability to lengthen the term of the debt financing.

Senator Worley said he was also concerned that while it was authorizing construction projects, the General Assembly also adopted prevailing wage laws, which increased the cost of those projects.

Chairman Clark thanked Ms. Lambert and Mr. Schwendeman for their presentation. He then asked CPAB Staff Administrator Pat Ingram to provide an overview of the capital planning process in preparation for the Board's July meeting to review the agency plans.

Ms. Ingram explained that establishment of a capital planning board had been recommended by legislative groups in both 1987 and 1989, and that KRS Chapter 7A which created the Capital Planning Advisory Board was enacted by the 1990 General Assembly. Two statutory dates guide the planning process. Agency capital plans are to be submitted to CPAB by April 1, and the Board's statewide capital plan is to be transmitted to the heads of the three branches of government by November 1 of odd-numbered years. The Board also traditionally holds a two-day meeting in July to review all of the agency plans.

Ms. Ingram said the agency plans consist of a narrative overview; status reports on 1998-2000 projects; a prioritized list and detailed information on capital construction, equipment, and information technology projects planned for 2000-02 and 2002-04; and a

summary listing and detailed information on new and expanded leases. The detailed project information includes the title, location, project type category and narrative description, need addressed category and project purpose/operating budget relationship narrative, history of submission in previous plans and budget requests, budget showing fund sources and cost elements, project features including a timetable and square footage, and analysis of the impact on the agency's operating budget.

Ms. Ingram said the agenda for the July meeting traditionally includes a statewide overview of the plan, an update on the state's bonded indebtedness, presentations by agency representatives, and recommendations on information technology and postsecondary education projects provided by the state entities with expertise in these areas. She said the July 1999 agenda may also include a report on space planning guidelines and utilization standards being developed by the Council on Postsecondary Education; a report of the Task Force on Historic Properties; an update on the long-range plan for state offices in Frankfort; a presentation on long-range plans for Louisville, Lexington, and Northern Kentucky; and a report on the Capitol renovation and restoration project.

Ms. Ingram said inputs to the Board's development of its statewide capital improvements plan include the cabinet/agency plans, recommendations on the postsecondary education projects, recommendations on the information technology projects, information and issues presented by CPAB members, and various other information. She then noted that the content of the statewide plans has varied in the four plans developed thus far, particularly in the presentation of project recommendations. Other than individual project recommendations, the plans usually include "issue-related" recommendations that address items affecting state capital processes and needs. The 1990-96 plan recommended the establishment of space management goals and recommended the construction of new state-owned office buildings in Frankfort and Lexington; it also identified categories of projects on which it believed the Commonwealth should place special emphasis. The 1992-98 plan listed project recommendations in two categories (not in priority order) and made 19 issue-related recommendations in seven categories. The 1994-2000 plan listed 97 prioritized and 60 non-prioritized project recommendations and included six issue-related recommendations. The 1996-2002 plan recommended projects (not prioritized) in three categories and included 11 issue-related recommendations. The content of the 1998-2004 plan, relative to both project and issue-related recommendations, remains to be determined. Ms. Ingram said it has been suggested that at the end of July meeting it would be helpful for each member to compile a list of his or her top 10 priority projects as a starting point for the development of project recommendations.

Chairman Clark thanked Ms. Ingram for her presentation. He then said the members' folders include information items on the Statewide Deferred Maintenance Pool

and on the request for recommendations on the information technology and postsecondary education capital projects. Chairman Clark reminded members that the next meeting would be July 7 and 8 in the conference room of the Council on Postsecondary Education in Frankfort.

David Nicholson, who is Director of the Louisville-Jefferson County Crime Commission and is overseeing work on the Jefferson County Judicial Center, was introduced to make a few comments before the Board's tour of the facility. Mr. Nicholson said the Jefferson County court system has moved from 27 courtrooms for 39 judges in 121,000 square feet of space in the Hall of Justice, to 283,000 square feet of space in this new facility and renovation of 121,000 square feet in the Hall of Justice. Each judge will have a courtroom. The project was designed, and they are confident it has the growth room necessary, to address the county's needs through the year 2020. It is a design-build project that is being done on time and within budget by Turner Construction of New York; the quality of some of the finishes (e.g., in the foyer and courtrooms) was better than expected by the county. Mr. Nicholson also complimented the cooperative working relationship that had been established with AOC.

Mr. Nicholson said the tenth floor, which houses chambers for a Supreme Court Justice and two Court of Appeals judges, was not part of the original project, but was able to be added through the efforts of AOC. He also noted that the Crown Room, in which the CPAB is meeting, will have a round table seating 32-36 individuals and a good sound system. It will be the site of term meetings; previously there was not an area on site in which the 23 district and 17 circuit judges could sit together around the same table.

Mr. Nicholson introduced Jefferson County Sheriff John Aubrey, who would be assisting with the tour. Colonel Aubrey welcomed the Board. He said members will see the latest security technology as they tour the building, including its security center in which deputies monitor banks of TV screens; a similar area will be included in the Hall of Justice, which is currently being renovated.

Chairman Clark thanked Mr. Nicholson and the Sheriff for their comments. The meeting was adjourned at 11:10. A tour of the Jefferson County Judicial Center followed.